

# for The Defense

Training Newsletter of the Maricopa County Public Defender's Office

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## 2006 Legislative Summary

By Dana P. Hlavac, Mohave County Public Defender

*Significant legislation was passed by the Arizona Legislature and signed by the governor during this past session. These changes become effective on September 21, 2006.<sup>1</sup> Due to space limitations this article will focus on those pieces of legislation which are most likely to have the broadest impact on the widest audience. Other significant changes are described and may be no less important, but will have a impact on a more specific audience. Additionally, some of the more minor changes have not been detailed at the discretion of the author. For the full details of each piece of legislation, please refer to the underlying legislation found at the website for the Arizona Legislature. This material should not be viewed as legal advice, or the definitive authority on any piece of legislation. Each reader is encouraged to review the language of each bill of interest and consult with other members of their organization to determine the impact of each change on the operations of the office and individual client cases.*

This past legislative session the Arizona Legislature, mandated the Department of Corrections to begin the process to contract for 3,000 additional beds<sup>2</sup> (at an estimated

\$11.2 million dollar increase in per diem in costs), while \$ 2 million was appropriated to the Department of Economic Services for family based program for substance abuse and \$ 500,000 was appropriated to the Department of Health Services for methamphetamine prevention programs that serve children.<sup>3</sup> This two-sided approach to criminal justice issues is reflected throughout the legislation passed this last year.

The following review is organized into major areas, although each reader should be aware that these areas often overlap. The precise language of each bill can be found at <http://www.azleg.state.az.us/Bills.asp>. Caution should be exercised to ensure that you are viewing the final version of any bill which you research from this site.

### Victim's Rights

**SB 1126** - This bill expands a victim's right to refuse an interview to the parent, or legal guardian of a minor who exercises victim's rights on behalf of that child. Therefore, caution should be exercised in cases where the victim is a juvenile. Additionally, where a parent of a juvenile victim could previously be contacted

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to obtain information as part of a defense investigation, they should now be treated as any other victim. *A.R.S. §§ affected: 8-382, 8-412, 13-4401 and 13-4433.*

**SB 1093** - This bill prohibits the use of a blank subpoena to obtain discovery, including access to a victim's records. Specific exceptions are made for certain victim records, but even these exceptions require a court hearing, and an opportunity for the victim to object and be heard. This bill is expected to be the subject of a great deal of discussion and litigation to determine the scope, applicability and constitutionality of certain provisions. On its face, the bill simply comports with prior case law<sup>4</sup> which prohibits the use of a subpoenas to obtain material **which is otherwise discoverable**. The question remains as to whether a subpoena can be utilized to obtain investigative information to assist the defense team in properly providing effective representation. Since the language of the bill is specific in its reference to not using subpoenas to obtain discovery, there is certainly a strong argument that can be made to support the proposition that subpoenas remain a useful tool for investigation of material which is not covered under the scope of Ariz..R.Crim.P. 15. *A.R.S. § affected: 13-4071.*

**SB 1176** - This bill makes the failure to comply with a victim's constitutional or statutory rights (presumably by the court, prosecution, or defense) grounds for a victim to request a re-examination proceeding within 10 days, or upon good cause shown. If requested, the court

**SHALL** conduct a hearing and reconsider any decision made while victim's rights were violated. This does not provide a basis for new trial, or to set aside a conviction (the right still belongs to the victim). While there are specific limitations on the conditions that must exist for a victim to re-open a plea, or sentence, this statute may impact the finality of the proceedings if a victim's rights are violated. *A.R.S. § affected: 13-4436.*

**SB 1052** - This bill allows *Good Samaritans* who are injured while assisting public safety officers to receive compensation from the Victim's Comp Fund. *A.R.S. § affected: 41-2407*

**SB 1386** - This bill provides that crime victims may receive free criminal reports. *A.R.S. § affected: 39-121.01; added § 39-127*

## Sex Offenses

**HB 2376** - This bill exempts Breast Feeding from being an act of indecent exposure and provides an "entitlement" to breast feed in public places. *A.R.S. §§ affected: 13-1402 and 13-3821; added § 41-1443.*

**SB 1039** - This bill criminalizes "voyeurism"<sup>5</sup> and makes it a class 5 felony, unless the voyeuristic act involves sexual intercourse, or contact AND the victim is recognizable, in which case it is a class 4 felony. The statute also modifies the elements and classification of A.R.S. § 13-3019, "Surreptitious photographing, videotaping, filing or digitally recording or viewing" to clarify that the use of a "device" is not required. *A.R.S. § affected: 13-3019; added § 13-1424*

**SB 1229** - This bill requires individuals otherwise required to register as sex offenders, but who are homeless to now register EVERY 90 days with the sheriff of the county in which they are present. *A.R.S. §§ affected: 13-3821 and 13-3822.*

**SB 1230** - This bill mandates the provision of a fingerprint at the time of sex offender registration. The MVD is required to send daily

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# Juvenile Sex Offenders

By Christina Phillis, Attorney Manager

In this day and age when sexual predators seem to be hiding behind every tree, the youth of Arizona must cautiously navigate their way to adulthood. But the risks are not limited to those posed by sexual predators. Children must also be wary of the criminal statutes hiding in the shadows, waiting to destroy their promising futures. Today's youth may have less to fear from the stranger on the street than from criminal statutes and consequences that come with sexual relationships.

Chapter 14 Title 13 of the Arizona Criminal Code lists the sexual offenses a child must be cognizant of when he or she begins dating. An innocent relationship between two ninth graders, a fourteen year old and a fifteen year old, can ruin the life of one of them forever. (In a recent survey, 30% of ninth graders in Arizona stated they were sexually active.) One seemingly innocent sexual encounter can net the fifteen year old charges consisting of public sexual indecency to a minor, sexual abuse, sexual conduct with a minor and molestation of a child. Since a child fourteen and under cannot consent, unbeknownst to him, the fifteen year old is a sexual predator.

(Most juveniles charged with sexual offenses are males, so this article will describe a boy caught up in the system. But it is important to note that girls are equally at risk).

As a result of pregnancy or being found in a compromising position, the teenager's life begins a downward spiral. First the child will suffer the humiliation of being questioned by police, parents and school officials. The result of which is that he will be charged in the adult system under A.R.S. 13-501 or in the juvenile justice system.

Children fortunate enough to remain in juvenile court quickly find themselves part of an unforgiving system. Pending adjudication the child will be confined to the bleak surroundings of detention. This is pre-trial incarceration



without bail. Years of academic achievement will be lost in a detention school that caters primarily to under performing youths. The juvenile's contact with family and friends is limited. The child becomes depressed and inconsolable.

Some children will be permitted to remain in the community, under the strict supervision of a surveillance officer and an electronic ankle monitor. The child will be placed with grandparents or friends of the family who do not have children. The court will order them not to have contact with any child under the age of thirteen, including siblings and cousins. The child will be ostracized from his family; the love and support he once cherished now forbidden. His family will have to inform the child's friends that they can no longer call or visit, once again alienating the child from normal teenage activities. There will be little left to look forward to since social gatherings and school functions are precluded. If the child is lucky, he can submerge himself in school sports, his only refuge.

The child will linger in a perpetual state of hopelessness for three to four months awaiting the trial and then the sentencing. On the day of sentencing, an already dark world turns black. A permanent label is attached to the child, that of sexual offender. Consequences come along with the label. The child may be committed to the Juvenile Department of Corrections, Adobe Mountain School, sent to a residential treatment center or placed on probation, either standard or intensive. Many of the judges will send the sex offender to Adobe Mountain believing that the child will be placed in a sex offender program and released upon its completion in eighteen to twenty-four months. Instead, due to a lack of openings in the program, the child is placed in general population to await an opening. He

will remain at the department until he receives the treatment he needs or until he reaches his eighteenth birthday. Thus, the fifteen year old will spend three years behind the fence, falling educationally and socially behind his peers. He will learn how to defend himself against his colleagues who call him baby raper. He can learn a trade to support himself, since the dream of college has vanished. Upon reaching adulthood, he will be released to cope in a world he is ill equipped to navigate.

More fortunate children will be ordered into a residential treatment center, provided the probation department has money to spare. The child will spend an additional two to three months in detention waiting for a facility to have an open bed. The residential center will become his home for the next two or more years. He will spend every day in comprehensive therapy with other juveniles. The message he will receive is that he is a sexual predator, he will always be a sexual predator, but he may be able to control his urges. His counseling sessions and progress will be monitored by the probation department. Every two months the child will return to court where the judge will address his progress. If the judge determines he is not progressing through the program, services will be terminated and a violation of probation filed, the end result of which will be commitment to the Arizona Department of Juvenile Corrections.

The luckiest children will be placed on probation to follow sex offender addendum terms. The child will be placed with a relative and ordered not to have contact with children; including going to places children might frequent, like McDonalds, Burger King, Peter Piper Pizza, the zoo, the movies, museums and the library. The child's whereabouts will be monitored at all times. A surveillance officer will stop by randomly to see if the child is home. However, the child will rarely be at home: when he is not in school he will be at a sex offender group. The group will meet six times a week, from the moment the child gets out of school until 9:00 p.m., leaving very little time to study. The child's aspirations will begin to slip along with his grades. He will spend more time preparing

assignments for the group than working on algebra. The cost of being unprepared for group far outweighs the cost of failing school; incarceration versus dropping out. The juvenile must succeed in group, including passing all polygraphs. The consequences are dire.

The social activities and sports teams the child used to participate in prior to sentencing are forbidden. He is now a sex offender and must dedicate himself to reforming his deviant ways. The child will be forced to focus on deviant sexual behavior until he can no longer recall what a normal relationship is. He will be stripped of his humanity.

The life of a child on sex offender probation is dictated by the whims of the supervising probation officer. During the child's first encounter with the probation officer he will be provided with a form that states the rules of surveillance supervision. Surveillance is a term of probation that is not included in the written terms of probation that the judge signed. According to the form, "Juveniles will earn rewards and privileges based on appropriate home and community behavior, including participation in treatment." The juvenile will be required to abide by the terms of supervision and will only be allowed to leave his place of residence to attend school, work, treatment and community services activities. With exemplary behavior, the probation officer may grant permission for the child to play video games, go to the mall, go to a friends house, eat at a restaurant, go to a family gathering, participate in school activities, see a movie, run an errand, ride a bike, skateboard, go to an amateur or professional sporting event, or seek employment. Only with the probation officer's consent will the juvenile be allowed to participate in activities that are considered normal and routine for the rest of society.

All children adjudicated of a sex offense will be required to provide a DNA sample (A.R.S. 13-610), fingerprints (A.R.S. 8-341(P)) and a HIV test at the victim's request (A.R.S. 8-341(O) and A.R.S. 13-1415). Under A.R.S. 13-3821(D),

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# Sentencing Chart Doodads

By Thomas Baird, Defender Attorney

## **Flat time offenses precluding A.R.S. § 41-1604.07 Community Supervision Credit**

- First degree murder & conspiracy of the same (13-703, -1003(D)). Second degree murder (case law).
- DCAC except 13-604.01(I) (second degree or luring). Sexual conduct with a minor (13-1405). Sexual assault (13-1406).
- Intentional/known aggravated assault weapon/instrument/injury on officer (13-604(U)).
- Felony release with deadly weapon/instrument or intentional/known serious injury (13-604.02).
- If new offense (any) on release or escape for a conviction of a serious offense, serious injury, weapon/instrument: **max and flat** (13-604.02).
- Serious offense with two serious priors (13604(S)).
- Inmate assault deadly weapon/instrument or intentional/known serious injury (13-1206), inmate riot (13-1207).
- Criminal syndicate using a minor (13-2308).
- Illegal control of an enterprise (13-2312).
- Involving or using minors in drug offense (13-3409).
- Serious drug offender (13-3410). Drug offense in school zone (13-3411).
- Aggravated DUIs (partial/circumstantial application) (28-1383).
- Note: Plea voidable if defendant is not advised of special sentencing conditions. *Rodriguez*, 126 Ariz. 104, 612 P.2d 1067 (App. 1980).

## **Bonus Time**

- 13-604(R): Committed on Release = +2 years (except 3<sup>rd</sup> party arguably)
- 13-604.02: Committed on Probation/Parole = no less than presumptive, stacked (if AZ probation or parole), 85% ok unless dangerous then = flat time (ordinary dangerous 85% ok)
- 13-604.04: Allegation of Violent priors = Disqualify from Prop 200 (must be alleged & can be m/s)
- 13-604(T): Gang Allegation = +3 years
- 13-604(M): 2+ offenses on same occasion = one offense except if creates additional risk. *Gordon*, 161 Ariz. 308, 315, (Ariz. 1989).
- 13-712: (Meth): sale, transport for sale, manufacture 5-10-15; Meth prior: 10-15-20

## **Forget Me Not Felonies**

C4-6: 5 years  
C2-3: 10 years  
3 priors = 1 forever  
Forever priors 13-604(w)(2): Agg DUI, mandatory prison (except ↓ threshold), intentional or knowing infliction serious physical injury, use exhibition deadly weapon/dang instrument, DCAC, sexual assault, sexual conduct with a minor under 15, first degree burglary, kidnapping, criminal enterprise, first and second degree murder, manslaughter, occupied structure arson.

## **"Say what": Waiver of Community Supervision**

If a probation tail imposed after a DOC term, the court may waive CS. If this happens, the client is still eligible for early release credits per A.R.S. § 41-1604.07(D). Also, as of June 2006 Senate Bill 1053 was signed into law that allows inmates to earn "Temporary Release" when CS waived. Note that clients do not earn early release on the 90 TR days so DOC reduces the TR days to accommodate this making, for instance, 90 days on a 6 year term becomes approximately 78 days.

## **The Restitution Piñata**

- Loss recoverable if: (i) loss = economic; (ii) loss but for the criminal conduct; and (iii) conduct directly cause loss. *Madrid*, 207 Ariz. 296, 85 P.3d 1054 (App. 2004).
- "But for" alone insufficient else would extend to consequential damages. *Wilkinson*, 202 Ariz. 27, 39 P.3d 1131(2002).
- Restitution is not supposed to punish. *Freeman*, 174 Ariz. 303, 848 P.2d 882 (App. 1993).
- Arguably drug buy money is not valid restitution: (i) not a victim (13-603(c)), *see also Maupin*, 166 Ariz. 250, 801 P.2d 485 (App. 1990); (ii) not a "direct cause" *Sequiera*, 995 P.2d 335 (HI App. 2000) (citing other jurisdictions).
- In adult restitution, if client is on probation the court can address restitution at any time regardless of jurisdictional statement. BUT: Client must have personal notice of hearing. Rule 9.1; *see also Benson*, 176 Ariz. 281, 860 P.2d 1334 (App. 1993) (lack of notice in context of designating an offense a felony).
- Fair market value of property at time it was stolen minus the FMV recovered. If no recovery, FMV at time of loss. *Reynolds*, 171 Ariz. 678 (App. 1992)
- Credit for items recovered "or are recoverable . . ." *Freeman*, 174 Ariz. 303 (App. 1993).

## **How far down the river?**

Court must consider "all statutory and relevant non-statutory" mitigating factors that the defendant offers. *Van Adams*, 194 Ariz. 408, 984 P.2d 16 (1999).

- Court must consider purpose of sentence including retribution, restraint, deterrence, and rehabilitation. *Gordon*, 19 Ariz. App. 339, 507 P.2d 678 (App. 1973).
- A trial court must point to conduct that somehow exceeds the elements or aggravates the circumstances of the offense the presumptive sentence is to be presumptively applied when the defendant's conduct satisfies but does not surpass the definition of the crime. *Alvarez*, 205 Ariz. 110, 67 P.3d 706 (App. 2003).
- Must impose presumptive sentence unless agg/mitig overbalances. *Ovind*, 186 Ariz. 475, 924 P.2d 479 (App. 1996).
- Odd but valid mitigation: victim's failure to minimize damage (*Freeland*, 176 Ariz. 544, 863 P.2d 263 (App. 1993) (victim did not wear seat belt)); loss of a more favorable plea due to ineffective counsel (*Suniga*, 145 Ariz. 389, 701 P.2d 1197 (App. 1985)); defendant suffering (*Anderson*, 199 Ariz. 187, 16 P.3d 214 (App. 2000) (getting shot)).
- Lack of remorse is *improper* aggravation. *Hardwick*, 183 Ariz. 649, 905 P.2d 1384 (App. 1995).

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updates of sex offender address changes to the Department of Public Safety. A DNA sample is required at the time of registration for out of state transfer registrations. Failure to carry a sex offender registration card is now a Class 6 felony. *A.R.S. §§ affected: 13-3821, 13-3822 and 13-3824.*

**SB 1328** - Creates a Joint Legislative Committee on Youthful Sex Offenders study committee which has two public defender seats. The committee is tasked with reviewing virtually every aspect of how youthful sex offenders are handled in the justice system<sup>6</sup> and submitting a report to the Office of the Governor, President of the Senate and Speaker of the House.

**SB 1471** - This bill allows statements to sex offender treatment providers to be admissible in subsequent proceedings (and evidence obtained as a result of those statements) if *there is a reasonable belief that the person has committed a new offense during the course of treatment*. A treatment provider *does not* violate any privilege previously established by disclosing such communications. *A.R.S. § affected: 13-4066*

**HB 2490** - This bill provides that operation of an adult oriented business within ¼ mile of a Child Care Facility; Charter School; Public Playground; Public recreational facility; a residence; or a place of worship is a Class 1 Misdemeanor. Each day is a separate violation. This bill has an Emergency Enactment Clause and some legislative findings. *A.R.S. § affected: 13-1422*

**SB 1260** - This bill extends to city attorneys the authority to abate a house of prostitution. *A.R.S. §§ affected: 12-803 and 12-804*

**HB 2307** - This bill creates MANDATORY jail sentences for prostitution:

- a) For a first offense, requires a minimum of 15 consecutive days in jail AND person is NOT eligible for probation or suspension of sentence until AFTER the entire sentence is served.

- b) For a second offense requires a minimum of 30 consecutive days in jail AND person is NOT eligible for probation or suspension of sentence until AFTER the entire sentence is served.

- c) A fourth or subsequent offense is now a CLASS 5 FELONY and requires a minimum of 180 consecutive days in jail AND person is NOT eligible for probation or suspension of sentence until AFTER the entire sentence is served (Allows for prison in lieu of jail).

*A.R.S. § affected: 13-3214*

**SB 1371** - This bill mandates that beginning on November 1, 2006 anyone convicted of a dangerous crime against children who receives probation is required to be monitored by a GPS system. Removal of the GPS monitor is classified as a Class 4 felony (including assisting in the removal). An emergency clause made GPS monitoring of individuals released to any form of community supervision from DOC to be subject to monitoring as of June 21, 2006. This bill also allocated \$1.5 million to DOC and AOC. *A.R.S. § affected: 13-902; added §§ 13-3725 and 41-1604.08*

**SB 1301** - This bill provides for automatic review of sex registration records 10 days after a convicted sex offender is released from confinement. If no registration is located, the County Attorney in the convicting jurisdiction may be required to file for an arrest warrant of the released individual for failure to register. *A.R.S. §§ affected: 13-3825 and 13-3826*

## Capital Issues

**SB 1305** - This bill allows a capital defendant to opt out of an automatic mental retardation evaluation. Opting out of such a preliminary evaluation, does NOT preclude the issue of mental retardation from being raised in a mitigation proceeding. The bill eliminates requirement for “psychological experts, and simply refers to “experts in mental retardation” which is further defined as a psychologist,

or physician with at least 5 years experience in testing, test assessment, evaluation and diagnosis of mental retardation. *A.R.S. § affected: 13-703.02*

**SB 1376** - This bill creates a State Capital Post Conviction Public Defender office and establishes an initial appropriation for setup of the office. It also establishes a nine member Nomination, Retention and Standards Commission on Indigent Defense to submit nominees for the position of SCP Public Defender to the Governor. The effective date is December 31, 2006 and currently is scheduled to terminate on July 1, 2011. *A.R.S. §§ affected: 12-116, 12-117, 13-4041 and 13-4234; added § 41-3011.11*

## **Juvenile Delinquency & Dependency**

**SB 1415** - This bill establishes a statutory waiver of notice in adoption, or termination proceedings for a potential father who does not file a paternity action within 30 days of being notified of status as a potential father. *A.R.S. §§ affected: 8-106 and 8-535.*

**SB 1128** - This bill clarifies that ***age alone*** does ***not*** render a person incompetent. *A.R.S. § affected: 8-291.*

**SB 1116** - This bill allows for the expanded opening of otherwise sealed juvenile competency reports for use by 1) the court, juvenile **or** prosecutor if otherwise permitted by law; 2) probation or the department of juvenile corrections for the purpose of assessment, supervision or monitoring of that juvenile; 3) a mental health treatment provider that assesses the juvenile, for, or provides treatment to the juvenile. *A.R.S. §§ affected: 8-291.06 and 13-4508.*

**SB 1324** - This bill requires that a school district, or charter school obtain the written consent of a parent, or guardian before conducting a mental health screening. The bill sets forth particulars that must be contained within the written consent. *A.R.S. § added: 15-104*

**HB 2387** - This bill allows for a city, town or county to prohibit persons under the age of 18 from entering Mexico. *A.R.S. § affected: 11-441; A.R.S. § added: 9-500.26*

**HB 2292** - This bill provides for administrative child support modifications for arrearage calculations and registry. The interest rate for arrearage is codified at ten percent. *A.R.S. §§ affected: 25-503 and 25-510.*

**HB 2048** - This bill mandates an increase level of reporting of investigations and outcomes by Child Protective Services. It is reasonable to anticipate that CPS will be more on top of actual investigation cases. This higher level of scrutiny may have some impact on the number and quality of Dependency cases as they relate to CPS involvement and monitoring. *A.R.S. § affected: 8-526*

**HB 2488** - This bill makes significant changes to child support enforcement practices and should be reviewed by practitioners in actions involving support actions. *A.R.S. §§ affected: 25-503 and 25-809.*

**SB 1339** - This bill allows a juvenile court to prohibit a juvenile adjudicated of a misdemeanor from carrying, or possessing a firearm while the court, or corrections has supervision. The bill also specifically refines the definition of prohibited possessor as it relates to juveniles to juveniles who were adjudicated of offenses that would have been a felony if committed by an adult. *A.R.S. §§ affected: 8-341, 13-904, 13-3101, 13-3111, 13-3113 and 41-1750.*

**SB 1119** - This bill makes substantial changes to Title 8 juvenile placement and parental termination proceedings. Specifically it establishes a placement preference for children who are either in the temporary custody of the State or who are placed when parental rights are terminated. The preference requires DES to place a child in the least restrictive type of placement available consistent with the needs of the child. This bill will impact dependency proceedings in which termination is a likelihood and should be carefully analyzed by dependency



practitioners. *A.R.S. §§ affected: 8-514, 8-536, 8-538, 8-824, 8-829 and 8-845.*

**SB 1267** - This bill mandates that the Arizona Supreme Court implement a two year integrated family court pilot program in a county with a population of less than 500,000 persons. *A.R.S. § affected: 25-323.02.*

## **Motor Vehicle Operation and DUI**

**HB 2322** - This bill limits a defensive driving school course to 4.5 hours, inclusive of testing, review and grading per class. This may require that more advanced classes be broken into multiple sessions, or days. *A.R.S. § affected: 28-3395.*

**HB 2389** - This bill adds that if a serious physical injury or death is caused during a stopped school bus violation, then the offender may face an enhanced penalty. *A.R.S. §§ affected: 28-672, 28-857 and 28-930.*

**HB 2615** - This bill creates a special civil assessment for school crossing violations effectively increasing the penalty for violators. *A.R.S. § affected: 28-797.*

**SB 1242** - This bill expands the power of MVD to deny registration for ANY vehicle owned by a person who is an owner of a vehicle which was the subject of an unpaid traffic violation. The bill is designed to enhance collection of delinquent monetary obligations to the courts. It is fair to anticipate this bill may result in an increased in unregistered vehicles in the future. *A.R.S. §§ affected: 28-1631, 28-1632, 28-1633, 28-1635 and 28-1636; A.R.S. § added: 28-1630*

**HB 2174** - This bill requires signage when Photo Radar is in use (signs must be covered if Photo Radar is NOT in use). The law provides discretion to a court to dismiss a citation on the basis of a signage violation. Limits certain service of process based on photo radar citations. Has a grandfathering clause that provides exceptions for previously authorized

systems. *A.R.S. §§ affected: 28-601 and 28-627; A.R.S. § added: 28-654.*

**SB 1275** - This bill attempts to make the introduction of breathalyzers easier for prosecutors and more difficult to impeach. The bill allows for the Department of Public Safety to “approve” breath testing devices and allows for judicial notice of the Department of Health Services or Department of Public Safety Rules as sufficient to allow for admissibility of results of a test performed on an “approved” device. This bill codifies that bracketing calibration checks satisfy the requirement for periodic maintenance records’ showing the device was in working order. The bill goes as far as to state that the inability of a person to obtain manufacturer’s schematics and software SHALL not affect admissibility. This section of the bill is clearly aimed at making the attempts of the defense bar to challenge the validity of the underlying methodologies of the breathalyzers moot. In light of the ultimate findings of the *ADAMS*<sup>7</sup> litigation, the impact of this legislation on the search for truth in such cases can certainly be expected to come under more intense scrutiny and challenge. The confrontation clause, hearsay and due process are among some of the key issues that this bill appears to create.

The bill also prescribes some minor changes to the Ignition Interlock Device (“device”). Definitions are modified in an apparent attempt to more closely regulate the Ignition Interlock industry within Arizona. This bill contained an emergency clause making it effective as of May 11, 2006. *A.R.S. §§ affected: 5-395.02, 5-395.04, 28-1301, 28-1304, and 28-1323; A.R.S. §§ added: 28-1465 and 28-1467.*

**HB 2208** - This bill creates the crime of causing serious physical injury or death by a moving violation, for physical injury, or death caused by violations of §§ 28-645(A)(3)(a) (violating a traffic control signal), 28-772 (left turn violations), 28-792 (crosswalk right of way violations), 28-794 (failure to exercise *due care*), 28-797(E) or (G) (school Zone speed limits and crosswalk signage) and 28-855 (stop Sign violations). The offense



is a class 3 misdemeanor. Conviction requires 90 license suspension for physical injury and 180 days for death. A victim may appear at any time prior to trial and state that all costs, or restitution has been satisfied at which time the court **shall dismiss** the case and such a dismissal shall bar further prosecution for the same offense.

The bill also creates the crime of causing death by use of a motor vehicle, a class 4 felony and the crime of causing serious physical injury by use of a motor vehicle, a class 5 felony. These crimes substantially mirror the crime of causing serious physical injury or death by moving violation, except that an added element is an adverse license status such as revocation, suspension, or a fraud in obtaining the license. *A.R.S. § affected: 28-672; A.R.S. §§ added: 28-675 and 28-676.*

**SB 1274** - This bill essentially clarifies that a requirement for a person to be subject to an ignition interlock device is an adverse license action subjecting the person to Aggravated DUI if found to be DUI while under such a restriction. This bill also takes the first step to criminalizing a refusal to submit to a BAC test by making it a class 6 felony for a person subject to the requirement of an ignition interlock device to refuse to submit to a BAC test. *A.R.S. §§ affected: 28-1383, 28-1385, 28-1387, 28-1402, and 28-3319*

**SB 1560** - This bill changes the period during which two refusals will result in enhanced license suspension or denial from twice within 60 months, to twice within 84 months. The same change in time period is applied to enhanced sentences for convictions of a second DUI within 84 months rather than the previous 60 months (also mandates a minimum of 30 hours of community restitution for a 2<sup>nd</sup> offense within the 84 month time period). Lastly the bill amends the Aggravated DUI statute to change section (A)(2) to be a third, or subsequent violation within 84 months versus the prior 60 month time period. *A.R.S. §§ affected: 28-673, 28-1321, 28-1381, 28-1382, 28-1383, 28-1385, 28-1387, 28-3304 and 28-3319.*

## Mental Health

**SB 1116** - This bill allows for the expanded opening of an adult competency examination report to be used by: 1) the court, defendant or prosecutor if otherwise permitted by law; 2) probation for the purpose of assessment, supervision or monitoring of that individual; 3) for use by a mental health treatment provider that assesses or treats the individual; and for 4) data gathering and scientific study. *A.R.S. §§ affected: 8-291.06 and 13-4508.*

## Drug Offenses

**SB 1048** - This bill expands the definition of serious drug offense for the purposes of A.R.S. § 13-3410 to include an attempt or conspiracy to commit any felony currently covered by the prior definition. The ultimate effect is to expand the list of offenses eligible for the mandatory sentencing provisions. *A.R.S. § affected: 13-3410.*

**SB 1427** - This bill clarifies that child or vulnerable adult abuse under A.R.S. § 13-3623 (child or vulnerable adult permitted to stay in a structure, or vehicle in which volatile, toxic or flammable chemicals are present for the purpose of manufacturing a dangerous drug) does not require that a person have care or custody of the child, or vulnerable adult. *A.R.S. §§ affected: 13-3623 and 13-3623.01.*

## Immigration

**HB 2580** - This bill upgrades the felony classification for smuggling from a class 4 felony to a class 2 felony if the human being smuggled is under the age of 18 and not accompanied by a family member (parent, grandparent, sibling, or other person related by consanguinity or affinity to the second degree).

The bill requires law enforcement to determine the country of citizenship for all arrestee's AND to notify the person's country of citizenship *unless* such notification is waived by the person. Violation of this provision does not give rise

to any rights and does not affect admissibility of statements, the validity of a conviction, or subsequent immigration proceedings.

Lastly the bill impacts bail in two ways. First it makes class 1, 2, 3 and 4 felonies unbailable offenses if the arrestee has entered, or remained in the country illegally. The denial of bail is still subject to a finding that the proof is evident, or the presumption great<sup>8</sup>. Secondly, whether the person entered, or remained in the country legally and the person's country of residence are now mandatory considerations in setting bail under A.R.S. § 13-3967(B). *A.R.S. § affected: 13-2319, 13-3961 and 13-3967; A.R.S. § added: 13-3906.*

## **Offense Classifications**

**SB 1027** - This bill provides that the theft of **any** vehicle engine or transmission is now a class 4 felony, regardless of the value of the engine or transmission. The bill also adds the *knowing* possession of a motor vehicle part with *knowledge* that the vehicle identification number has been removed, altered, destroyed, defaced or otherwise altered to the conducting a chop shop statute, making it a class 4 felony. *A.R.S. §§ affected: 13-105, 13-1802 and 13-4702.*

**HB 2581** - This bill includes a significant number of low level felonies now reclassified to misdemeanors. Specifically the following previously classified class 6 felonies are now class 1 misdemeanors effective September 21, 2006 (based on date of offense):

A.R.S. § 13-1208 Assault Vicious Animals

A.R.S. § 13-1802 Theft (under \$1,000 other levels of theft also reclassified based on financial threshold shift outlined in the table below).

A.R.S. § 13-1806 Shoplifting (under \$1,000 other levels of shoplifting also reclassified based on the financial threshold shift outlined in the table below).

A.R.S. § 13-2704 Unsworn Falsification

A.R.S. § 13-3002 False or Forged Message

A.R.S. § 13-3305 Betting and Wagering

A.R.S. § 13-3610 Abandonment of Spouse

A.R.S. § 13-3611 Refusal or Neglect to Provide for Spouse

The new threshold values for Theft are:

Value	Classification
Under \$1,000	Class 1 Misdemeanor
\$ 1,000 or more, but less than \$ 2,000	Class 6 Felony
\$ 2,000 or more, but less than \$ 3,000	Class 5 Felony
\$ 3,000 or more, but less than \$ 4,000	Class 4 Felony
\$ 4,000 or more, but less than \$ 25,000	Class 3 Felony
\$ 25,000 or more	Class 2 Felony

The new threshold values for Shoplifting are:

Value	Classification
Under \$ 1,000	Class 1 Misdemeanor
\$ 1,000 or more, but less than \$ 2,000	Class 6 Felony
\$ 2,000 or more	Class 5 Felony

A.R.S. §§ affected: 13-1208, 13-1802, 13-1805, 13-1806, 13-2208, 13-2704, 13-3002, 13-3305, 13-3610 and 13-3611.

**SB 1160** - This bill creates the crime of bestiality, adds it to the public sexual indecency statute and makes provision for an act to be a dangerous crime against children if the act involves "causing another person" under the age of 15 to engage in an act of bestiality. This would theoretically be subject to GPS monitoring

if an individual is given probation<sup>9</sup>. Bestiality is classified as a class 6 felony, unless it involves a minor under the age of 15 in which case it is classified as a class 3 felony. *A.R.S. §§ affected: 13-604.01 and 13-1403; A.R.S. § added: 13-1411.*

## **Sentencing Bills**

**HB 2083** - This bill expands the list of specific aggravators and mitigators under A.R.S. § 13-702 to include consideration of whether a person during or immediately following the charged offense complied with § 28-661, § 28-662, or § 28-663. *A.R.S. § affected: 13-702.*

**SB 1050** - This bill clarifies that prior convictions are to be determined by a judge, and not a jury for sentencing purposes. *A.R.S. §§ affected: 13-702 and 13-702.01.*

**SB 1444** - This bill is Arizona's new "Third Strike Law" and should be carefully reviewed by every criminal law practitioner. For a person convicted of a violent, or aggravated felony who has been previously convicted on separate occasions of two or more violent or aggravated felonies the bill mandates a life sentence with the only possibility of release being commutation after having served at least 35 years. In order for this sentence to apply two circumstances BOTH MUST exist:

1. The aggravated or violent felonies that comprise the prior convictions shall have been entered within fifteen years of the conviction for the third offense, not including time spent in custody or on probation for an offense or while the person is an absconder; **AND**
2. The sentence for the first aggravated or violent conviction shall have been imposed before the conduct occurred that gave rise to the second conviction, and the sentence for the second aggravated or violent felony conviction shall have been imposed before the conduct that gave rise to the third conviction.

The bill makes provisions for out of state convictions to be used in imposing a third

strike sentence based upon the similarity of the elements between the other state and Arizona's criminal statute. Lastly, for purposes of a third strike life sentence the bill limits "violent or aggravated felony" to the following offenses:

1. First Degree Murder;
2. Second Degree Murder;
3. Aggravated Assault resulting in Serious Physical Injury or Involving the Discharge, Use or Threatening Exhibition of a Deadly Weapon or Dangerous Instrument;
4. Dangerous or Deadly Assault by Prisoner;
5. Committing Assault with the Intent to Incite to Riot or Participate in a Riot;
6. Drive by Shooting;
7. Discharging a Firearm at a Residential Structure if the Structure is Occupied;
8. Kidnapping;
9. Sexual Conduct with a Minor that is a Class 2 Felony;
10. Sexual Assault;
11. Molestation of a Child;
12. Continuous Sexual Abuse of a Child;
13. Violent Sexual Assault;
14. Burglary in the First Degree Committed in a Residential Structure if the Structure is Occupied;
15. Arson of an Occupied Structure;
16. Arson of an Occupied Jail or Prison Facility.
17. Armed Robbery;
18. Participating in or Assisting a Criminal Syndicate or Leading or Participating in a Criminal Street Gang;
19. Terrorism;
20. Taking a Child for the Purpose of Prostitution;

- 21. Child Prostitution;
- 22. Commercial Sexual Exploitation of a Minor;
- 23. Sexual Exploitation of a Minor;
- 24. Unlawful Introduction of Disease or Parasite as Prescribed by Section 13-2912(A)(2) or (3).

*A.R.S. §§ added: 13-101.01 and 13-713.*

### **Identity Theft**

**HB 2024** - This bill requires a governmental agency (this would clearly include government funded indigent defense offices) to develop “commercially reasonable” procedures to ensure that entity, or personal identifying information is secure. *A.R.S. § affected: 41-4151.*

**SB 1219** - This bill expands current law regarding the confidentiality of social security numbers. The language places explicit restrictions on what may be made available on an entity’s website. *A.R.S. § affected: 44-1373.*

**HB 2484** - This bill creates an affirmative obligation on entities (Including government indigent defense offices) prior to discarding, or disposing of records, to redact or destroy records containing a name (at a minimum, a first initial and last name) along with any one or more of the following additional types of information; 1) SSN; 2) credit, charge, or debit card number; 3) retirement account number; 4) savings, checking or securities account number; or 5) drivers license or identification card number. The bill has a slightly delayed effective date of September 30, 2006. *A.R.S. § added: 44-7501.*

**HB 2786** - This bill requires medical professionals to establish protocols for the protection of personal information. Minimum protocols are defined. Failure to establish a protocol constitutes unprofessional conduct subject to both disciplinary and remedial action. *A.R.S. § affected: 32-3201; A.R.S. § added: 32-3210.*

**HB 2220** - This bill extends the statutory protections currently available to a peace officer, prosecutor, judicial officer or public defender that limit personal identifying information contained in certain otherwise public records<sup>10</sup>. *A.R.S. §§ affected: 11-483, 11-484, 28-454, 39-123 and 39-124.*

### **Self-Defense**

**SB 1145** - This bill clarifies that an affirmative defense excuses a criminal act, but that affirmative defenses DO NOT include justification defenses. For ALL Justification defenses, the burden of proof is completely shifted. Once the Defendant introduces evidence of justification, the State must prove beyond a reasonable doubt that the defendant did NOT act with justification.

The bill amends the crime prevention justification statute by clarifying that crime prevention as a justification is not limited to a person’s home, residence, or place of business. *A.R.S. § affected: 13-103, 13-205, and 13-411*

The bill creates an expanded justification defense in the use of force (including deadly force) in the defense of a residential or occupied vehicle (referred to as the “castle doctrine”). The justified use of such force is predicated on the person reasonably believing himself/herself, or another person to be in imminent peril of death or serious physical injury and the person against whom the force is used was in the process of, or had unlawfully or forcefully entered the home, or occupied vehicle. Adds A.R.S. § 13-418

The bill then creates a presumption that the person using force is acting reasonably if the force is used against a person who is attempting to, or has unlawfully or forcefully entered a residential structure, or occupied vehicle. Specific exceptions to this presumption are when: 1) the person against whom the force was used had a legal right to be present in the residence, or vehicle; 2) the person against whom the force is used was a parent,



grandparent, or legal guardian attempting to remove the child, or grandchild from the residence or occupied vehicle; 3) the person using the force is engaged in an unlawful activity or is using the residence, or occupied vehicle to further an unlawful activity; and 4) the person against whom the force is used is a law enforcement officer who attempts to enter the residence or occupied vehicle as part of their official duties. Adds A.R.S. § 13-419.

The bill provides for an award of attorney fee, costs, compensation for lost income and all expenses if a defendant in a civil action prevails on the basis of this justification defense. Adds A.R.S. § 13-420.

The bill had an emergency clause making it effective on April 24, 2006. An argument has been presented that this bill presents a procedural change which may be applied retroactively which as of this writing has received acceptance by Division 2 of the Arizona Court of Appeals<sup>11</sup>. It would be strongly advisable to continue to argue for this modified justification and the applicable presumptions when appropriate even for cases with a date of incident prior to April 24, 2006.

## **Hunting**

HB 2130 - This bill details the behavior which will fall into Interference with Rights of Hunters, a class 2 misdemeanor. *A.R.S. § affected: 17-316.*

HB 2129 - This bill creates the petty offense of Unlawful Feeding of Wildlife. Primarily targeted at those who entice dangerous wildlife into housing areas, the bill exempts squirrels and birds. Additionally the bill establishes steep civil penalties for unlawful taking, or wounding of wildlife ranging from a low of \$50 for small game and aquatic animals to \$ 8,000 for endangered or trophy species animals. The basis upon which a wildlife license can be revoked, suspended or denied is expanded as well. *A.R.S. §§ affected: 8-207, 13-907, 17-101,*

*17-309, 17-314, 17-315 and 17-340; A.R.S. § added: 13-2927*

## **Miscellaneous**

HB 2013 - This bill provides a mechanism for potentially removing registered voters from the active voter rolls if the person who does not respond to jury duty summons. *A.R.S. § affected: 21-331.*

HB 2074 - This bill deals with concealed weapons permits. It eliminates the two hour training previously required for permit renewal and provides for reciprocity in recognizing out of state permits (for non-residents). *A.R.S. § affected: 13-3112.*

HB 2128 - This bill exempts certain tax exempt organizations from registering amusement gambling events with the Arizona Attorney General. *A.R.S. §§ affected: 13-3302 and 13-3311.*

SB 1047 - This bill requires judicial contractors or volunteers to submit to fingerprint and criminal background checks. *A.R.S. §§ affected: 12-102 and 12-323.*

HB 2110 - This bill provides immunity for a Good Samaritan who administers epinephrine (absent gross negligence, willful misconduct or intentional wrongdoing). *A.R.S. § added: 36-2226.*

HB 2442 - This bill requires common carriers which ship human remains to place the remains in a suitable container. Human remains are not required to be shipped within 24 hours after death. *A.R.S. § affected: 36-326.*

SB 1303 - This bill addresses concerns with the change of name statute being used to hide identities and requires additional disclosure on all applications of certain criminal history. *A.R.S. § affected: 12-601.*

HB 2133 - This bill establishes a Lengthy Trial Fund to provide higher levels of juror compensation. *A.R.S.§ affected: 21-222.*

SB 1147 - This bill criminalizes the intentional interference or use of a telephone by a person in an emergency situation. *A.R.S.§ affected: 13-2915.*

SB 1072 - This bill provides civil immunity type presumptions in favor of peace officers and law enforcement agencies together with their political subdivisions. *A.R.S.§ added: 12-716.*

HB 2785 - This bill prohibits telephone companies from selling, procuring or turning over telephone records without consent, subject to defined exceptions. One of the stated exceptions is as otherwise authorized by law, which will presumably include providing records in response to lawful subpoena. *A.R.S. §§ added: 44-1376, 44-1376.01, 44-1376.02, 44-1376.03, 44-1376.04 and 44-1376.05.*

HB 2221 - This bill authorizes a city or town to create a residential rental inspection program. The parameters of a program established under this authorization include interior inspections if any of a list of prerequisites exist. One of the listed prerequisites includes “a significant level of crime associated with the property”. Entering into the residence still generally requires a warrant or consent of the owner<sup>12</sup>. *A.R.S. §§ affected: 33-1247, 33-1902, 42-15103; A.R.S. §§ added: 9-1301, 9-1304, 9-1305, 9-1306, 9-1307, 33-1814 and 33-1906.*

HB 2076 - This bill allows for a weapon to be transported in a vehicle in the “map pocket” without being considered a concealed weapon. *A.R.S. § affected: 13-3102; A.R.S. § added: 13-3102.01.*

SB 1066 - This bill made significant modifications to the criminalization of black market tobacco sales. The bill has an effective date of September 30, 2006, with certain sections delayed until June 30, 2007. *A.R.S. §§ affected: 42-1124, 42-1125, 42-1127, 42-2003, 42-3001,*

*42-3004, 42-3006, 42-3007, 42-3010, 42-3053, 42-3151, 42-3201, 42-3202, 42-3203, 42-3206, 42-3207, 42-3209, 42-3210, 42-3211, 42-322, 42-3222, 42-3303, 42-3304, and 42-3305; A.R.S. § added: 42-3201.01, 42-3202.01, 42-3202.02, 42-3202.03, 42-3205 and 42-3212.*

## Still to Come

Major legislative ballot referendums will be on the ballot this fall in the November election that may significantly impact criminal law practice in Arizona. Keep your eyes out for the following referendum measures:

A referendum measure to make methamphetamine offenses ineligible for probation (making them mandatory prison offenses).

## (Endnotes)

1 Certain enacted legislation was accompanied by an emergency clause, which made them effective immediately upon signature of the Governor. Some bills had specific effective dates beyond September 21, 2006. These exceptions are specifically noted in this article.

2 HB 2868

3 HB 2554

4 See, *Carpenter v. Superior Court* (App.Div. 1 1993) 176 Ariz. 486, 862 P.2d 246, review denied.

5 Knowingly invade the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation. . . .

(C) For purposes of this section a person’s privacy is invaded if both of the following apply:

1. The person has a reasonable expectation that the person will not be photographed, videotaped, filmed, digitally recorded or otherwise viewed or recorded; **and**

2. The person is photographed, videotaped, filmed, digitally recorded or otherwise viewed with, or without a device, either a) while undressed, or partially undressed, or 2) engaged in sexual intercourse, or sexual contact, or 3) while urinating or defecating, or 4) in a manner that directly or indirectly captures or allows the viewing of the person's genitalia, buttock or female breast, whether clothed or unclothed, that is not otherwise visible to the public.

6 D. The committee shall:

1. Define a category of youthful sex offenders.
2. Review county attorney charging practices for youthful sex offenders.
3. Review sentencing practices for sex offenders who were minors at the time of the commission of the offense and who were charged as adults.
4. Review the current psychological and treatment services for youthful sex offenders, including evidence-based practices concerning psychological and treatment services for youthful sex offenders.
5. Review housing policies for youthful sex offenders, including the following:
  - (a) Explore and identify housing options for youthful sex offenders.
  - (b) Identify model housing options for transferred youthful sex offenders.
  - (c) Identify housing and unification of the family policies.
6. Review sex offender notification processes for transferred youth and identify a mechanism for review of sex offender risk assessment.
7. Review adult supervision and case management practices and policies.
8. Review custodial and independent living programs and residential, foster

and shelter care and after care programs for youthful sex offenders.

9. Identify funding sources for programs relating to transferred youthful sex offenders.

10. Identify appropriate risk and needs assessment tools and consider that assessment results be applied to all aspects of case processing.

11. Make recommendations concerning laws, rules or procedures that are necessary to improve the prosecution of, treatment for, housing for, familial unification of and community notification regarding youthful sex offenders.

7 *State of Arizona v. Ricardo Dominic Meza*, 203 Ariz. 50 (2002); 50 P.3d 407; 2002 Ariz. App. LEXIS 106; 377 Ariz. Adv. Rep. 6.

8 A.R.S. § 13-3961 (A).

9 SB 1371

10 A.R.S. §§ 11-483, 11-484, 28-454, 39-123 and 39-124.

11 *State of Arizona v. David Garcia*, 2 CA-SA 2006-0040, opinion may be reviewed at <http://www.apltwo.ct.state.az.us/Decisions/sa20060040opn.pdf>

12 The consent required is specifically that of the owner and **NOT** the occupant. This exception appears to possibly circumvent the normal expectation of privacy in a leasehold premise once a city establishes this type of a program.



## Continued from Juvenile Sex Offenders, p. 4

the court may order the child to register as a sex offender until he is twenty-five years old. Although community notification is not required for adjudicated children, the school district in which the child resides will be notified, A.R.S. 8-350. The school district may request the criminal history of the juvenile and provide this information to the school that the child attends. The school must make this information available to teachers, and to any parents, guardians or custodians upon request. Taking a proactive approach, the school principal will notify each of the student's teachers, coaches and school security guards. The child will hear the whispers and feel the stares of faculty as he moves through his day. Further, the child will draw unwanted attention from his peers when they become aware he is not allowed to shower after gym class and must change his clothes in the presence of the coach.

He will never experience the carefree days of high school. He will not be allowed to participate in sports, join a school club or enjoy after school activities. School dances will be forbidden, including prom. Any activity the child is involved in must be supervised by a responsible, probation approved adult who has been informed of the child's sexual history. The child will become a recluse rather than inform his community and church leaders of his indiscretion. His only outlet will be sex offender counseling; his only friends, boys from the group.

Upon the child's eighteenth birthday the sex offender consequences, with the exception of registration, come to an end. He is free to enjoy his life unless he applies to college or for a job that requires a background check. In accordance with A.R.S. 8-349, the juvenile is unable to request his delinquent record be destroyed until he is twenty-five years old. For a minimum of seven years, the public will have access to the juvenile's criminal history. His juvenile record will allow colleges and employers to deny him access to a fruitful future.

Prior to the signing of the Adam Walsh Child Protection and Safety Act into law on July 27, 2006, juveniles only had to concern themselves with state laws concerning sex offenders. The Adam Walsh Act creates a national sex offender registry and requires states to amend their own registries to comply with the federal legislation or lose 10% of federal funding provided under the Omnibus Crime Control Act. The registries must be accessible on the internet. Children who are at least fourteen years of age at the time of the offense and the offense would be considered an aggravated sexual assault under the federal statutes will be required to register for a minimum of twenty-five years. The juvenile must register with authorities every three months. The authorities will then be required to inform the schools, public housing agencies, volunteer organizations and other groups in the area. As a result of the national registry juveniles will have a difficult time locating a residence, especially those who live in section eight housing with their families. Families will be forced to choose between being homeless to care for their son and housing for the family. Children convicted of sexual offenses may become the new face of the homeless.

Teenagers engaged in consensual sexual activity have more to fear than just an unwanted pregnancy. The law does not differentiate between the actions of teenagers engaged in a relationship and a thirty year old man who preys on children. Curious teenagers may find themselves the victims of laws that were originally authored for their protection. What they don't know can hurt them for the rest of their lives.





# Jury and Bench Trial Results

## July 2006

### Public Defender's Office

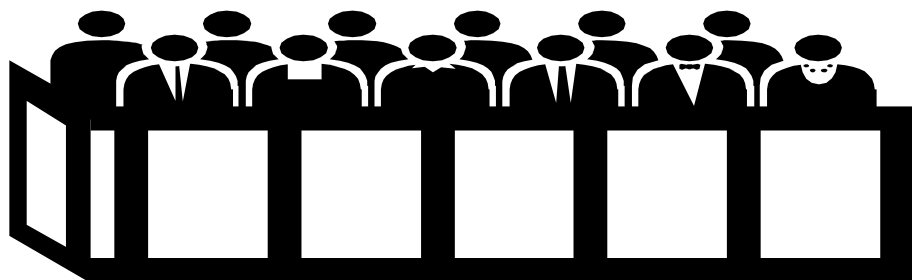
Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group 1</b>						
6/26 - 7/6	<b>Reece</b> Hales <i>Armstrong</i>	Gordon	Church	CR05-119541-001DT 2 cts. Aggravated Assault, F3D Aggravated Assault, F2D, DCAC	Hung Jury - DCAC allegation dismissed.	Jury
7/6	<b>Barraza</b>	Hicks	Zabor	CR05-137486-001DT Aggravated Assault, M1	Not Guilty	Bench
7/6 - 7/11	<b>De La Torre, D.</b> <i>Curtis</i>	Gottsfeld	Lucca	CR06-106030-001DT POM for Sale, F2	Not Guilty	Jury
7/6 - 7/12	<b>Timmer</b>	Nothwehr	Foster	CR05-138001-001DT 2 cts. Aggravated DUI, F4	Guilty	Jury
7/17 - 7/20	<b>Williams</b> Page	Rayes	Sponsel	CR05-138289-001DT Resisting Arrest, F6	Guilty	Jury
7/20 - 7/25	<b>De La Torre, D.</b> Carson <i>Armstrong</i>	Akers	Shipman	CR05-014373-001DT Aggravated Assault, F4	Not Guilty	Jury
7/20 - 7/26	<b>Farrell</b> Carson	Klein	Church	CR05-013761-001DT 2 cts. Aggravated Assault, F3D	Not Guilty	Jury
7/21	<b>Bressler</b> Carson	Burke	Squires	CR06-104482-001DT Assault, M1 Assault, M3	Not Guilty - Assault, M1; Guilty of Assault, M3	Bench
7/25	<b>Iacob</b> <b>Willmott</b> Sain <i>Curtis</i>	Burke	Squires	CR05-145694-001DT Aggravated Assault, M1	Guilty	Bench
7/31	<b>Bressler</b> Carson	Burke	Bolenbaker / Church	CR05-013598-001DT Theft, F6	Guilty	Jury
<b>Group 2</b>						
7/21 - 7/26	<b>Widell</b> <b>Evans</b> Souther	Dunevant	Pollak	CR05-145334-001DT TOMOT, F3	Hung Jury (6-2 not guilty)	Jury
7-10 - 7/12	<b>Guenther</b> Clesceri Souther <i>McDonald</i>	Klein	Flynn	CR05-014007-001DT Agg. Assault, F6	Not Guilty	Jury

# Jury and Bench Trial Results

## July 2006

### Public Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
<b>Group 3</b>						
7/6 - 7/12	<b>Jackson</b>	Mahoney	Schesnol	CR05-012156-001 DT Theft, F3 False Statement to Get Work Comp, F6	Guilty of lesser misdemeanor Theft Guilty False Statement To Get Work Comp	Jury
7/17 - 7/17	<b>Reasons Emerson</b>	Nothwehr	Minnaugh	CR06-100195-001 DT 2cts. Agg DUI, F4	Guilty	Jury
7/18 - 7/20	<b>Conter</b>	Nothwehr	Rothblum	CR05-013323-001 DT 2cts. Agg DUI, F4	Guilty 1ct Agg DUI Not Guilty 1ct. Agg DUI	Jury
7/20 - 7/21	<b>Cain Browne</b>	Steinle	Bonaguidi	CR05-138114-001 DT Criminal Trespass, F6 Assault, M3	Guilty Criminal Trespass Not Guilty Assault	Jury
7/21 - 7/21	<b>Stone Schreck Charlton</b>	O'Connor	Rubalcaba	CR05-012988-001 DT Disorderly Conduct, F6D	Guilty but not dangerous	Jury
<b>Group 4</b>						
7/10 - 7/12	<b>Fluharty</b>	Arellano	Giordano	CR05-031714-001SE Agg. Assault, F3D	Guilty	Jury
7/10 - 7/21	<b>Sheperd Thomas</b>	Udall	Adams	CR06-105544-001SE 2 cts. Agg. Assault, F3D	Guilty	Jury



# Jury and Bench Trial Results

## July 2006

### Legal Defender's Office

Dates: Start - Finish	Attorney Investigator <i>Paralegal</i>	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
06/29 - 07/06	<b>Cuccia</b>	Fields	Dahl	CR2006-13979 Misconduct Involving Weapons, F4 Unlawful Flight, F5	Guilty	Jury
07/16 - 07/25	<b>Gaunt</b>	Fields	Hunter	JD13331 Severance Trial	Severance Granted	Jury
07/10 - 07/14	<b>Kolbe</b>	McMurdi	Stewart	JD505550 Severance Trial	Severance Granted	Jury
7/28	<b>Kolbe</b>	McVey	Garcia	JD505395 Severance Trial	Severance Granted	Jury
7/17	<b>Parker</b>	Gaines	Valadez	CR2006-106186-001 PODD, F4 PODP, F6	Guilty: PODD Not Guilty: PODP	Jury
7/10	<b>Sanders</b>	Reinstein	Morescki	JD13912 Severance Trial	Severance Granted	Jury
7/12	<b>Sanders</b>	Foster	Bell	JD13920 Severance Trial	Severance Granted	Bench
7/25	<b>Sanders</b>	Schwartz	Southard	JD13746 Severance Trial	Severance Granted	Bench
7/31	<b>Sanders</b>	Dairman	Thompson	JD14811 Dependency Trial	Dependency Found	Bench
07/17 - 07/26	<b>Schaeffer</b> <i>Apple</i>	Cole	Collins	CR2005-014552 Murder 1 Agg Assault, F3 Dangerous Shooting at a Structure, F3 Dangerous Promoting a Criminal Street Gang, F3 Dangerous	Not Guilty: Murder 1 Promoting a Criminal Street Gang, F3 Dangerous Guilty: Murder 2 Agg Assault, F3 Dangerous Shooting at a Structure, F3 Dangerous	Jury

# Jury and Bench Trial Results

## July 2006

### Legal Advocate's Office

Dates: Start - Finish	Attorney Investigator Paralegal	Judge	Prosecutor	CR# and Charges(s)	Result	Bench or Jury Trial
6/27 to 7/10	<b>Tucker</b> Mullavey Prieto	Hicks		CR2005-011176-001-DT; Att. Murder-F2 (3 cts); Weapons Misconduct-F4; POM-F6	1st Ct Att. Murder-NG; 2 Cts Att. Murder-Deadlocked; POM & Weapon Misconduct-Guilty	Jury
7/10 to 7/19	<b>Schmich</b> Mullavey Sinsabaugh Stovall	Stephens		CR2005-121394-001-SE; 17 Cts Sex. Cond w/Minor-F2; & Molest. of Child-F2	Guilty (all counts)	Jury
7/18 to 7/26	<b>Garcia</b> Mullavey Stovall	Holt		CR2005-013533-001-DT; Escape-3rd-F6; False Rep to Law Enforce-M1	Guilty	Jury
7/20 to 7/25	<b>Buck</b> Prieto	Gama		CR2005-138574-001-DT; Att. Sex. Asst-F3;	Guilty of Lesser; Att. Sex. Abuse-F6	Jury
7/25 to 7/27	<b>Glow</b>	Udall		CR2005-134417-001-DT; PODD-F4; POND-F4; POM-F6; PODP-F6	Cts. 1, 2, 3-Guilty; Ct. 4 Directed Verdict	Jury
7/26 to 7/31	<b>Gray</b> Brauer Sinsabaugh	Blakey		CR2004-130421-001-DT; PODD for Sale-F2; Poss. of Equip & Chem-F3; POM-F6	Mistrial	Jury

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### for The Defense

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